UNITED
NATIONS

A

Administrative Tribunal

Distr.
LIMITED

AT/DEC/601
29 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 601

Case No. 613: JEFFERSON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of William A. Jefferson, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 12 March, 15 June, 15 July and 31 July 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 July 1991, the Applicant filed an application requesting the Tribunal:

"7. To order the Respondent, pursuant to article 9 of its Statute:

(a) To rescind his decision of 31 August 1990, to maintain his decision of 26 September 1988, to reclassify the Applicant's post as Library Assistant at the GS-5 level under the new seven-level grade structure.

(b) To appoint a Specialist or a Consultant on Library and Information Science in order to conduct an expert appraisal of the Applicant's functions, ..., thereby to facilitate proper reclassification of his post...

(c) To reclassify the Applicant's post at appropriate level in accordance with the ICSC [International Civil Service Commission] General Service Job Classification Standards...

(d) To pay the Applicant appropriate amount of arrears, representing the difference between the salary and allowances he actually received under his current grade level and the salary and allowances he would have received had his post been reclassified at a higher level.

(e) To pay, on behalf of the Applicant and of the Organization, appropriate contributions to the United Nations Joint Staff Pension Fund on the basis of the amount of arrears referred to in item (d) above.

(8) To award the Applicant appropriate and adequate compensation for the moral and material injuries suffered by him as a consequence of the unreasonable delays in the NYGSCARC [New York General Service Classification Appeals and Review Committee] procedures for over 12 months, ...

(9) To hold oral proceedings on the case in order to hear the testimonies of the Applicant and other concerned witnesses, ..."

Whereas the Respondent filed his answer on 4 February 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in [his] case as one of the elements considered by NYGSCARC in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and asked him "to advise the Tribunal whether there is any further information that he ... wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and, the Applicant, on 17 November 1992, provided his comments thereon, together with replies to questions put by the Tribunal;

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

William A. Jefferson entered the service of the United Nations on 13 October 1981, on a short-term appointment at the G-2 level, as an English Clerk. He then served on further intermittent short-term appointments at the UN Dag Hammarskjold Library (DHL) until 1 January 1983, when he was offered a three-month fixed-term appointment at the G-3, step I level. He served on further fixed-term appointments until 16 September 1983, when he was granted a probationary appointment. On 1 June 1984, his appointment became permanent.

In July 1982, the International Civil Service Commission (ICSC) had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant at the User's Service, Collection Management Section, DHL, was prepared for initial classification and submitted to the Classification Service.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS), announced to the staff, in information circular ST/IC/84/45, the establishment of the

Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". The Applicant's post was classified at the G-3 level.

On 25 April 1986, the Applicant, together with 52 General Service staff members of DHL, submitted revised job descriptions to OPS, reserving their right to appeal the revised classification levels.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

The Classification Review Panel established in accordance with information circular ST/IC/86/45, recommended that the Applicant's post be classified at the G-4 level, as a Library Clerk. The Assistant Secretary-General for Personnel Services approved this recommendation on 22 January 1987. The Applicant's promotion to the G-4 level, as Senior Clerk, with effect from 1 April 1985, was made retroactive to 1 January 1985, as Library Clerk.

In a memorandum dated 15 May 1987, to the Chairman of NYGSCARC, the Applicant appealed the administrative decision to classify his post at the G-4 level, arguing, inter alia, that some posts in the Library that had been classified at the G-5 level, "share only part of my principal duties."

On 11 November 1987, the Assistant Secretary-General for the Office of Human Resources Management (OHRM[1]) announced to the staff, in information circular ST/IC/87/59, "Transitional

---

[1] Successor of OPS.

measures for staff in the General Service and Related Categories at Headquarters appointed or assigned to new functions in 1985 or 1986".

The Applicant's job description was submitted for classification in connection with these transitional measures. The post was reviewed by the Compensation and Classification Service on the basis of the General Service Job Classification Standards approved by the ICSC and the guidelines used for the Library Related occupation, and classified at the G-5 level. The Applicant's promotion to the G-5 level, as Library Assistant, was made retroactive with effect from 1 September 1987.

In a memorandum dated 10 July 1989, to the Assistant Secretary-General, OHRM, the Applicant appealed the classification decision on the grounds that the functions of the post were classified at the wrong level. The Deputy Chief, Compensation and Classification Service, OHRM, acknowledged the Applicant's request for review and informed him that his case would "be reviewed by the Compensation and Classification Service, ... and, if necessary, referred to NYGSCARC for its advice."

In accordance with the procedures specified in administrative instruction ST/AI/301, dated 10 March 1983 and annex II of information circular ST/IC/86/27, dated 28 April 1986, the Assistant Secretary-General, OHRM, submitted the case to NYGSCARC for advice on 3 May 1990, following its review and analysis by the Compensation and Classification Service, which had recommended that the post be "graded no higher than level five."

NYGSCARC reviewed the appeal at its 13th meeting on 11 June 1990. Its findings and recommendation read as follows:

"Findings

4. ... Based upon its review of the job description, the information provided by the appellant in the memorandum of appeal and attachments, the analysis provided by the Compensation and Classification Service

which confirmed the classification decision,the Committee concluded that the functions of the post corresponded to the GS-5 level...

Recommendation

5. Accordingly, the Committee recommends that the post be maintained at the GS-5 level in the Library Related occupation (...)."

In a memorandum dated 31 August 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC "that the post be maintained at the GS-5 level in the Library Related occupation."

On 31 July 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent wrongfully ignored the recommendations to appoint a specialist or consultant to appraise library functions in connection with the initial classification of General Service posts in DHL.

2. The Respondent wrongfully failed to conduct a job classification audit of the Applicant's post, as required by paragraph 13 of administrative instruction ST/AI/301.

3. The Respondent's decision to maintain the classification of the Applicant's post at the G-5 level violates his conditions of service, Article 100 of the Charter, certain administrative issuances and the Tribunal's jurisprudence.

4. The procedures of NYGSCARC violated the Applicant's due process rights and the Respondent's decision based on its recommendation was vitiated by lack of due process.

5. The Applicant was injured by an "unreasonable delay" in the handling of his appeal to NYGSCARC.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision on the classification of the Applicant's post was properly taken, following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant challenges the Respondent's decision, dated 31 August 1990, adopting a recommendation by the New York General Service Classification Appeals and Review Committee (NYGSCARC) to reject the Applicant's appeal. It found that his post was properly classified at the G-5 level. In support of his application, the Applicant advances a series of contentions largely similar to claims presented to the Tribunal in the case which led to Judgement No. 541, Ibarria (1991). The Applicant requests rescission of the Respondent's decision and other forms of relief, including retroactive compensation and damages. The Applicant also requests oral proceedings, which the Tribunal finds unnecessary in this case since the record before the Tribunal is adequate for its resolution of the application.

II. The issues in this case are similar to those presented to the Tribunal in Judgement No. 541, Ibarria (1991). In Ibarria, the Tribunal recalled its jurisprudence in Judgement No. 396, Waldegrave (1987), in paragraph XV of which the Tribunal stated:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether, under all the circumstances, the Respondent has acted within his reasonable discretion ..."

The same principle governs this case. The Applicant's contentions are aimed largely at persuading the Tribunal that the content of the Applicant's post is such that it should be classified at a higher level. As indicated above, however, the Tribunal will not enter into an evaluation of the elements of the Applicant's job description.

III. As in Ibarria, the Tribunal's concern in this case is with matters, such as a denial of due process, if the staff member neither sees nor has an opportunity to comment on documentation sent to NYGSCARC by the Service in charge of classification.

IV. It appears that a significant memorandum, dated 15 September 1989, submitted by the Deputy Chief, Compensation and Classification Service, which was presented to NYGSCARC and on which NYGSCARC relied in its recommendation to the Respondent, was not made available to the Applicant. He, therefore, had no opportunity to submit material he deemed relevant with regard to it. The Tribunal directed that the memorandum be made available to the Applicant and he has submitted a memorandum dated 17 November 1992, with respect to it.

V. The Tribunal has considered the information submitted by the Applicant with his memorandum dated 17 November 1992. The Applicant challenges in paragraphs 2 and 4 of that memorandum, the conclusions drawn by the Deputy Chief of the Compensation and Classification Service as to the inapplicability to his post of Professional level job descriptions which were used for comparison. This is essentially a repetition of arguments previously advanced by the Applicant in support of his classification appeal. Next, the Applicant asserts that, contrary to a statement in paragraph 3 of the 15 September 1989 memorandum, he was never consulted with respect to his appeal and that he sought an audit review in his letter of appeal dated 10 July 1989. Whether the Applicant was "consulted," in whatever sense he uses the word, may be a disputed

issue of fact, but it is considered by the Tribunal to be of no decisive significance, since the Applicant had an adequate opportunity to present his views and did so in his classification appeal and other submissions. Moreover, the Tribunal has held that, whether an audit is to be conducted, is a discretionary matter for the Administration to decide.

The Applicant next asserts that the Deputy Chief, Compensation and Classification Service, was in error in stating that UNDP project and IDRB country reports were excluded from the unsymboled UN/SA materials covered by the review of duties, which was submitted subsequent to the post having been reviewed in the initial classification exercise. The Tribunal is unable to conclude that, if indeed the Deputy Chief was in error on this point, the error was material. Moreover, there is no explanation in the Applicant's 17 November 1992 memorandum as to why the alleged error should be considered material.

Finally, the Applicant points out an apparent disagreement on the part of the Deputy Chief, Compensation and Classification Service, with the Applicant's view, set forth in the job description he submitted, that a college degree is required for the post. It is obvious, however, that the Applicant's view, as well as that of the Deputy Chief, were before NYGSCARC for its consideration. Accordingly, the Tribunal concludes that nothing in the Applicant's 17 November 1992 memorandum warrants any further consideration by NYGSCARC, of its recommendation dated 30 August 1990.

VI. For the reasons set forth in paragraph II above, the Tribunal makes no determination as to the Applicant's substantive contentions regarding the proper level at which his post should be classified. That was for the Respondent to determine, in the exercise of his reasonable discretion, based on such appropriate analysis and advice from NYGSCARC as he wished to rely upon. In this case, as in Ibarria, the Tribunal is satisfied that the

Respondent acted within his reasonable discretion. As regards the procedural flaw identified in paragraph IV above, it having been cured, caused no injury to the Applicant.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary